

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION
of New Rule I (42.20.171))
relating to property taxes)

TO: All Concerned Persons

1. On March 11, 2004, the department published MAR Notice No. 42-2-733 regarding the proposed adoption of New Rule I and amendment of ARM 42.20.625 relating to property taxes at page 557 of the 2004 Montana Administrative Register, Issue No. 5.

2. A public hearing was held on March 31, 2004, to consider the proposed adoption and amendment. The department withdrew its proposal to amend ARM 42.20.625 at the hearing because they would like to further amend additional rules in this chapter regarding eligibility. It would be more appropriate to make the amendment that had been proposed to ARM 42.20.625 with the upcoming amendments rather than at this time.

The change that the department intends to propose will make it easier for parcels under 20 acres in size to be considered dry land classifications. They will better address situations where production of the land is not marketed but rather consumed by animals. Those changes will also ensure that in summer fallow operations, where the \$1,500 annual income that can be produced, can be produced every other year in terms of the growing season. Right now there is some concern that the department would require \$1,500 annual gross income each and every year. However, if you have something in fallow situation the property owner would not be producing.

3. Oral testimony received at the hearing is summarized as follows along with the response of the department:

COMMENT NO. 1: Dale Hankins, Chouteau County Planner, stated that he appreciated the efforts to clarify this process and that the department staff had made a presentation in Chouteau County regarding the six-year appraisal cycle. He mentioned that he was concerned that the statement in New Rule I, which states, "on January 1 of each year, the department shall ascertain the correct land classification," will mean the six-year reappraisal or assessment that has occurred in the past would now be an annual review.

RESPONSE NO. 1: There is still a six-year reappraisal cycle where the department takes a look at all of the property in the state and revalues it. This particular reference refers to the statutory requirement that each land is classified correctly. In other words, the land is classified as agricultural land, tract land, or forestland. This text is referring to a change of use that may occur from one year to another.

COMMENT NO. 2: Dale Hankins asked, "under the definition of 'owner' where does the corporation fall into the classification?" Mr. Hankins stated that he realizes the rule has been withdrawn but would like the department to clarify this issue when the rule is proposed again.

RESPONSE NO. 2: The department welcomes any proposed language Mr. Hankins may offer regarding this rule. In agricultural eligibility, the first test is ownership. If a parcel is classified under a corporate name, another one under an individual's name, and another under the spouse's name, each would have to stand alone to meet the agricultural eligibility test. The law is very specific that the first determining factor applies to the titled ownership.

COMMENT NO. 3: Representative John Witt, House District 89, testified that he was concerned about the department's application with regard to ownership and "doing business as" (d/b/a). He stated that in some cases the ownership is the same person but they are doing business as something else and not necessarily as a corporation. He further stated that he believes the ownership is the same in those cases. He suggested that there should be more clarification in those instances.

Representative Witt thanked the department for their efforts of addressing his concerns and his constituents' concerns. He stated he appreciates the opportunity to bring some issues to the department's attention.

He thanked the department for developing a program to search out agricultural parcels that are not being taxed properly. He indicated that it is his hope that in the department's effort to look for those properties that might not have been properly assessed, other properties may be located that perhaps have fallen through the cracks. He suggested that the goal should be to have agricultural producers treated equally and that each county is operating in the same manner.

Representative Witt stated he appreciates the extra effort the department took to look into his concerns and make the effort to correct these concerns in a timely manner. He is hopeful that there will be a statewide review of all agriculture properties to determine if those properties are appropriately appraised.

He further stated he is not sure that the definition within the code is clear as to what "constitutes an agricultural producer." He asked the department to clarify the definition of an agricultural producer. He also asked what was the definition of "agricultural land?"

RESPONSE NO. 3: The department thanks Representative Witt for his comments and the assistance he has provided to the department as well. With regard to the definition of "agricultural producer," the department believes it is any individual who has acreage under their ownership that can demonstrate that it can produce and market from the land \$1,500 of annual gross income.

Based on what the law says, "agricultural land" is land as it is defined in the statute. That would be land that can demonstrate an annual gross income of

\$1,500 from the product that is marketed from the land, or it is any land that is greater than 160 acres that doesn't have covenants prohibiting agricultural use.

COMMENT NO. 4: Representative Witt requested that he be notified earlier in the future of any proposed rule changes for other agricultural rules the department may be contemplating. He thought the department should have notified a legislator of this proposed action earlier in the process.

RESPONSE NO. 4: The department apologizes that he was not notified earlier during the draft stages of this proposal process but the department has added Representative Witt to the "Interested Parties" mailing list for all future agricultural rules.

COMMENT NO. 5: John Youngberg, Montana Farm Bureau, testified that the Farm Bureau had no problem with New Rule I as it was published. The Farm Bureau would like to have an opportunity to comment about any future rule changes that are agricultural related. He also asked if the department intended to use negotiated rulemaking for the amendments the department proposes to promulgate later this spring.

RESPONSE NO. 5: Mr. Youngberg's name was added to the "Interested Parties" list. The department generally uses an informal process of negotiated rulemaking where interested parties are invited to participate in the drafting, review and approval of the rules. This will be the forum chosen for the upcoming agricultural rule amendments in May or June.

COMMENT NO. 6: Representative Witt asked if the department was already applying the changes that they intend to propose with the future rule amendments?

RESPONSE NO. 6: The department has been training the department staff on this new application statewide because of the large geographic area that must be covered.

COMMENT NO. 7: Representative Witt asked how the department could start a new process, change classification, build a new program, and put it into effect without a public hearing on those administrative rule changes.

RESPONSE NO. 7: The department believes that the changes that are being made at this time are more appropriate to what the law directs us to do rather than the detail that the rules may address. The department believes that the process being developed will be a much better treatment of taxpayers' interests but are not specific to just rules that may be considered.

COMMENT NO. 8: Richard Owen, Montana Grain Growers Association, asked whether government payments would count towards the \$1,500 of income.

He also asked, "how a person would prove what the underlying base for farmland was?"

RESPONSE NO. 8: Government payments are counted toward the \$1,500 in the 20 to 160 acre category.

This would include such things as the bushels of grain produced. In other words, the productivity from the land would be the base for farmland.

COMMENT NO. 9: Representative Witt stated in previous meetings with the department, he and the staff had discussed Conservation Reserve Program (CRP) and farm funds. He asked if the department's position changed on those issues because it seemed like there had been questions about why some government subsidy payments qualified and some did not?

RESPONSE NO. 9: The department is not aware of any that would not be allowed in the 20 to 160 acre category. However, there may be other situations that could disqualify parcels for those benefits.

COMMENT NO. 10: Representative Witt asked about paragraph 3 in the proposal notice, which states, "the proposed new rule does not replace or modify any section currently found in the Administrative Rules of Montana". He questioned whether this rule was in fact changing something currently in the rules.

RESPONSE NO. 10: The proposed New Rule I does not modify any section of the current rules. It is just an attempt to provide some examples to clarify what would happen when the land use changed.

COMMENT NO. 11: Representative Witt asked what process the department intends to take to amend other rules regarding agricultural classifications. He asked if the department would hold separate hearings for each of the proposed changes or would a single hearing be held to address all the changes?

RESPONSE NO. 11: The department will look at the basic rules in Chapter 20 and address all the eligibility rules at one time.

COMMENT NO. 12: Representative Witt asked if the department intended to include specific statewide training as part of the changes that will be proposed with the other rule revisions. He voiced a concern that there is disparity across the state with regard to the application of classifications for the agricultural properties.

RESPONSE NO. 12: The department is not aware of any cases where property owners are being treated differently. However, if Representative Witt

has examples of cases where that has occurred, the department would like to know about those instances so they can be addressed.

COMMENT NO. 13: Dale Hankins, Chouteau County Planner, mentioned that there seems to be a lot of difference in how the land is used. Under Montana codes, under the subdivision statutes, there are a few exemptions as to breaking out a parcel of land from another parcel but if the land doesn't qualify for one of those exemptions, one of those being agricultural land, then it is legally classified as a subdivision if it is under 160 acres. Under the agricultural exemption, Montana code allows at the local level a covenant to be signed whereby the owner of that land declares its agricultural use. It doesn't really get into the complexity of animal unit months, production, and revenues. It seems, for the purposes of clarity, there could be some consideration of blending Department of Revenue administrative rules with subdivision laws. There are the same numbers, 20 acres, 160 acres, etc. It seems like the problems that the Planner's Office reviews are not as complex but are along the same line and issues.

RESPONSE NO. 13: The department appreciates the observation regarding these similarities but it is bound by the statutory criteria for determining the proper classification of all properties in Montana.

4. The department adopts New Rule I (ARM 42.20.171) as proposed.
5. An electronic copy of this Adoption Notice is available through the Department's site on the World Wide Web at <http://www.discoveringsmontana.com/revenue>, under "for your reference;" "DOR administrative rules;" and "upcoming events and proposed rule changes." The Department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

/s/ CLEO ANDERSON
CLEO ANDERSON
Rule Reviewer

/s/ DON HOFFMAN
DON HOFFMAN
Acting Director of Revenue

Certified to the Secretary of State May 10, 2004